

HEALTH LAW

Update

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American Healthcare Management Case: Alleged Understaffing as a Basis of Civil and Criminal False Claims Actions

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Recent actions taken by the federal government against American Healthcare Management (AHM), its top executives, and affiliated nursing homes draw attention to the fact that regulators are basing civil and criminal false claims actions on alleged inadequate levels of staffing at nursing homes. Presumably this theory could extend to other types of institutional healthcare providers. On February 28, 2007, the former CEO of AHM was sentenced to 18 months in prison and ordered to pay a \$29,000 fine as a result of these actions. This case is described in more detail in this *Health Law Update*.

Criminal Suit

On November 17, 2005, the federal government indicted AHM, its former CEO Robert Wachter, and three affiliated nursing homes. The indictment alleged that all defendants conspired to make false statements in connection with payments for healthcare, to defraud a healthcare benefit program, to make false statements regarding healthcare benefits, and to conceal or fail to disclose events affecting the right to healthcare benefits. The indictment also charged defendants with making false statements and false records regarding healthcare benefits for specified individuals.

The allegations underlying the indictment involved circumstances of neglect and abuse caused by staff shortages. As asserted by the indictment, the staff shortages were mandated pursuant to a 40 percent formula for staffing imposed by defendant Wachter, i.e., that staffing payroll could not exceed 40 percent of the Medicaid per diem. The government's position was that Wachter and AHM should be held responsible because Wachter determined the budget and staffing levels for all three nursing homes, and as a result of staffing limitations that AHM and Wachter put in place, the facilities had insufficient nursing staff to meet the needs of residents.

The government claimed that from January 1998, until July 2001, during Wachter's period as CEO of AHM, inadequate staffing at the nursing homes resulted in numerous residents suffering from

dehydration and malnutrition. According to the allegation, staff were often unavailable to assist residents who could not feed themselves or drink liquids without help. Residents went without cleaning or bathing for extended periods of time and developed life-threatening bed sores that would have been preventable with proper care. For example, an 88-year-old resident, completely dependent on one of the nursing homes for care, sat for hours at a time in her own waste, and nursing staff found ants crawling all over her body. There were also instances of patients walking away from the nursing homes and instances of physical abuse by staff members. One 78-year-old patient was beaten by an employee and later died as a result of his injuries, according to the complaint.

During the same time, the government claimed, Wachter and AHM billed Medicare and Medicaid for services they knew were inadequate or not performed at all. The government further asserted that the purpose of the conspiracy was for the defendants to enrich themselves by means of such reimbursement and to conceal from federal and state governments the actual conditions and the nature of the care provided.

If convicted, Wachter would have faced up to five years in prison and a fine up to \$250,000 on each count, and the corporations would have faced fines of up to \$500,000 on each count. AHM, Wachter, and the three nursing homes pled guilty on October 10, 2006, to conspiracy to defraud the Medicare and Medicaid programs.

On February 28, 2007, Wachter was sentenced to 18 months in prison and ordered to pay a \$29,000 fine. AHM and the three nursing homes were each fined \$180,250 and placed on two years' probation. Based on a U.S. Department of Justice news release, it appears that the parties received the maximum sentences available under the plea agreement.

Civil Suit

In the fall of 2005, AHM, its two individual owners, and the same three affiliated nursing homes agreed to settle a related civil suit. The government alleged that the parties violated the False Claims Act by submitting claims for services provided to Medicare and Medicaid residents below the level of care required by state and federal regulations. Moreover, the government claimed the parties obtained profits to which they were not entitled. The government alleged that many of the services not provided were a result of staff shortages in the nursing homes. In particular, the nursing homes were accused of not having enough registered nurses, licensed practical nurses, and nurse's aides because of staffing limitations imposed by AHM.

As part of the civil settlement, the parties agreed to pay the government \$1.25 million to settle the allegations of submitting false and fraudulent nursing home billings to Medicare and Medicaid. AHM and the three nursing homes agreed to permanent exclusion from participation in any federal healthcare program. Wachter was barred from participation in the federal healthcare programs for 20 years. The other principal owner of AHM agreed to certify annually that he has no involvement in Medicare or Medicaid, and that if he did ever seek to bill those programs for services, he would enter into a corporate integrity agreement at that time. None of the parties admitted wrongdoing and denied any civil, criminal, or administrative liability in the settlement.

Conclusion

The civil and criminal suits described above are evidence that inadequate staffing of nursing homes, and presumably of other institutional healthcare providers as well, can create false claims exposure based on the theory that poor quality or improper levels of services are not properly reimbursable under federal healthcare programs. If you have any questions about this *Health Law Update*, please contact any of the attorneys in our Healthcare Practice Area.

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